United Nations

Centre against Apartheid

Notes and Documents

1/92 JANUARY 1992

THE CONVENTION FOR A DEMOCRATIC SOUTH AFRICA (JOHANNESBURG, SOUTH AFRICA 20 and 21 DECEMBER 1991)

[*Note*: This issue is published in pursuance of the United Nations Declaration on Apartheid and its Destructive Consequences in Southern Africa, adopted by consensus by the General Assembly on 14 December 1989.

It contains a Declaration of Intent, signed by 17 of the 19 political parties, organizations and administration groups that took part in the Convention for a Democratic South Africa (CODESA) held in Johannesburg on 20 and 21 December 1991 as well as the terms of reference for Working Groups established by the Convention.

Participating in the Convention were representatives of the African National Congress; Bophuthatswana; Ciskei; the Democratic Party; the Dikwankwetla Party; the Inkatha Freedom Party; the Intando Yesizwe Party; the Inyandza National Movement; the Labour Party; the Natal/Transvaal Indian Party; the National Party; the National People's Party; the Solidarity Party; the South African Communist Party; the South African Indian Congress; Transkei; the United People's Front; Venda; the Ximoko Progressive Party and the South African Government.

Representatives of the United Nations, the Organization of African Unity, the Movement of Non-Aligned Countries, the Commonwealth, the European Community and the International Committee of the Red Cross also attended the Convention as observers.]

92-02684

All material in these Notes and Documents may be freely reprinted.
Acknowledgement, together with a copy of the publication containing the reprint, would be appreciated.
United Nations, New York 10017

TABLE OF CONTENTS

I. CODESA DECLARATION OF INTENT 3

II. STRUCTURES OF CODESA 5

Annexes 17

I. Joint statement by international observers to the first meeting of CODESA 17

II. Statement to the press by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees and Personal Representative of the United Nations Secretary-General to CODESA 17

III. Statement to the press by H.E. Prof. Ibrahim Gambari (Nigeria), Chairman of the Special Committee against Apartheid 18

I. CODESA DECLARATION OF INTENT

We, the duly authorized representatives of political parties, political organizations, administrations and the South African Government, coming together at this first meeting of the Convention for a Democratic South Africa, mindful of the awesome responsibility that rests on us at this moment in the history of our country, declare our solemn commitment:

1. To bring about an undivided South Africa with one nation sharing a common citizenship, patriotism and loyalty, pursuing amid our diversity, freedom, equality and security for all irrespective of race, colour, sex or creed; a country free from apartheid or any other form of discrimination or domination.

2. To work to heal the divisions of the past, to secure the advancement of all and to establish a free and open society based on democratic values where the dignity, worth and rights of every South African are protected by law.

3. To strive to improve the quality of life of our people through policies that will promote economic growth and human development and ensure equal opportunities and social justice for all South Africans.

4. To create a climate conducive to peaceful constitutional change by eliminating violence, intimidation and destabilisation and by promoting free political participation, discussion and debate.

5. To set in motion the process of drawing up and establishing a Constitution that will ensure, inter alia:

(a) That South Africa will be a united, democratic, nonracial and non-sexist State in which sovereign authority is exercised over the whole of its territory;

(b) That the Constitution will be the supreme law and that it will be guarded over by an independent, nonracial and impartial judiciary;

(c) That there will be a multiparty democracy with the right to form and join political parties and with regular elections on the basis of universal adult suffrage on a common voters' roll. In general the basic electoral system shall be that of proportional representation;

READEX
FICHE

(d) That there shall be a separation of powers between the legislature, executive and judiciary with appropriate checks and balances;

(e) That the diversity of languages, cultures and religions of the people of South Africa shall be acknowledged;

(f) That all shall enjoy accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly, protected by an entrenched and justiciable bill of rights and legal system that guarantees equality of all.

We agree:

1. That the present and future participants shall be entitled to put forward freely to the Convention any proposal consistent with democracy.

2. That CODESA will establish a mechanism whose task it will be, in cooperation with administrations and the South African Government, to draft the texts of all legislation required to give effect to the agreements reached in CODESA.

We, the representatives of political parties, political organizations and administrations, further solemnly commit ourselves to be bound by the agreements of CODESA and in good faith to take all such steps as are within our power and authority to realize their implementation.

[Signed] African National Congress; Ciskei Government; Democratic Party; Dikwankwetla Party; Inyandza National Movement; Intando Yesizwe Party; Labour Party of South Africa; Natal/Transvaal Indian Congress; National Party; National People's Party; Solidarity; South African Communist Party; Transkei Government; United People's Front; Venda Government; Ximoko Progressive Party

We, the South African Government, declare ourselves to be bound by agreements we reach together with other participants in CODESA in accordance with the standing rules and hereby commit ourselves to the implementation thereof within our capacity, powers and authority.

[Signed] South African Government

II. STRUCTURES OF CODESA

In addition to the Declaration of Intent, CODESA set up five working groups charged with various tasks aimed at ensuring the smooth functioning of the process. These are:

(a) Working Group on the Creation of a Climate for Free Political Participation (Working Group 1);

(b) Working Group on General Constitutional Principles (Working Group 2);

(c) Working Group on Transitional Arrangements/Interim Government/Transitional Authority (Working Group 3);

(d) Working Group on the Reincorporation of Transkei, Bophuthatswana, Venda and Ciskei (TBVC) (Working Group 4);

(e) Working Group on Time-Frames and the Implementation of CODESA's Agreements/Decisions (Working Group 5).

Each of these working groups has been assigned specific tasks to be carried out under clearly stipulated terms of reference.

Thus, **Working Group 1** is charged with two assignments: the creation of a climate for free political participation and the role of the international community.

The terms of reference of the first assignment is as follows:

"**WHEREAS** the parties at CODESA have committed themselves to the terms and objectives set out in the Declaration of Intent,

"**AND WHEREAS** it has been nationally and internationally recognized that a climate for free political participation is an essential element of the transitional phase towards and in a democratic South Africa,

"**AND WHEREAS** democracy requires that all the participants in the political process should be free to participate in that process without fear and on an equal footing and on a basis of equality with the other participants,

"**IT IS RECORDED** that the terms of reference of the Working Group on the Creation of a Climate for Free Political Participation shall be as follows:

"1.1.1 To investigate, report upon and make recommendations with regard to the actions needed to be taken to foster and establish in South Africa a climate in which all individuals and organizations can participate freely, without interference or intimidation, in all political activity and, in particular, in the processes leading up to the introduction of a new Constitution.

"1.1.2 Identification of the key issues and problems that need to be addressed.

"1.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

"1.1.4 Specifically, but without vitiating the generality of the above, to consider whether and how the following issues should be addressed:

"(a) The finalization of matters relating to the release of political prisoners and political trials;

"(b) The return of exiles and their families;

"(c) The amendment and/or repeal of any remaining laws militating against free political activity, including the elimination of all discriminatory legislation;

"(d) Political intimidation;

"(e) The termination of the use of military and/or violent means, or the threat thereof, of promoting the objectives/views of a political party or organization;

"(f) Political neutrality of, and fair access to, State-controlled/statutorily instituted media (particularly the South African Broadcasting Corporation (SABC) and South African Television (SATV)), including those of the TBVC States;

"(g) The successful implementation of the National Peace Accord;

"(h) The prevention of violence-related crime and matters giving rise thereto;

"(i) The role of the security forces in South Africa and the TBVC States;

"(j) The funding of political parties;

"(k) The fair access to public facilities and meeting venues;

"(l) The advisability of statutory provisions guaranteeing equal opportunity for all parties to establish and maintain their own means of mass communications;

"(m) The need for an improvement in socio-economic conditions;

"(n) The fostering of a spirit of tolerance amongst political parties;

"(o) The role of intensive and continuous educative and informative campaigns in respect of political tolerance, the working of democracy and the processes of CODESA;

"(p) The advisability of fair and reasonable access for political parties to all potential voters, wherever they may reside;

"(q) Any other matters which the Working Group may consider relevant to its brief."

The terms of reference for the second assignment on the role of the international community is as follows:

"**WHEREAS** the parties at CODESA have committed themselves to the terms and objectives set out in the Declaration of Intent,

"**AND WHEREAS** the validity and acceptability of the process of transition and the outcome thereof internally and internationally will depend on an open and fair process providing for full and effective participation of all South Africans,

"**IT IS RECORDED** that the Working Group on the Role of the International Community shall have the following terms of reference:

"2.1.1 To investigate, consider, report upon and make recommendations with regard to the role that the international community and/or organizations could be asked to play in the formal or informal process involved in the period leading up to the introduction of a new Constitution for South Africa.

"2.1.2 Identification of the key issues and problems that need to be addressed.

"2.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations."

Working Group 2 is also charged with two assignments: general constitutional principles and constitution-making body/process.

The terms of reference for the first assignment on general constitutional principles read as follows:

"**WHEREAS** the parties at CODESA have committed themselves to the terms and objectives set out in the Declaration of Intent,

"**IT IS RECORDED** that the Working Group on General Constitutional Principles shall have the following terms of reference:

"1.1.1 To investigate, report upon and make recommendations with regard to general constitutional principles which should be enshrined in and not contradicted by any other provisions of a new Constitution.

"1.1.2 Identification of the key issues and problems that need to be addressed.

"1.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

"1.1.4 Specifically, but without vitiating the generality of the objective above, to consider the issues in appendix A.

"Appendix A

"(a) The superiority of the Constitution over ordinary law.

"(b) The Constitution will be rigid.

"(c) Equality before the law.

"(d) The ultimate power of interpretation of the Constitution will repose in the judiciary.

"(e) A clear division of the powers and functions of the executive, legislature and judiciary.

"(f) The principle of the vertical division of competencies: genuine devolution of power.

"(g) The electoral system will be based on the principle of equal franchise for adults and the principle of proportionality.

"(h) The legislature will be divided bicamerally and each house of parliament will be elected on a separate basis with each enjoying joint and several responsibilities.

"(i) A justiciable bill of fundamental human rights will be enacted.

"(j) The judiciary will be independent and enjoy security of tenure.

"(k) The principle of checks and balances will be enshrined in the constitution.

"(l) The definition of citizenship.

"(m) The principle of accountability.

"(n) A sovereign, democratic, non-racial and non-sexist State and society.

"(o) Unitary state with three-tier levels of government.

"(p) Common voters' roll.

"(q) Non-racial geographical federation or confederation.

"(r) A cabinet representative of all the States.

"(s) Judges appointed by an independent commission.

"(t) A President as head of State.

"(u) Official language(s)/predominant official language.

"(v) Guaranteed regular elections and the electoral system.

"(w) A parliamentary system in which the executive is responsible to Parliament.

"(x) Preservation of the Roman Dutch common law and judicial systems.

"(y) Financial control.

"(z) State security.

"(aa) National symbols.

"(bb) Economic principles.

"(cc) Diversity of interests.

"(dd) Constitutional continuity.

"(ee) Any other matters which the Working Group may consider relevant to its brief."

The terms of reference for the second assignment on constitution-making body/process read as follows:

"**WHEREAS** the parties at CODESA have committed themselves to the terms and objectives set out in the Declaration of Intent to the establishment of a democratic South Africa, enjoying internal legitimacy and internal acceptance,

"**AND WHEREAS** it has been agreed that a Working Group on the Constitution-making Body/Process shall be appointed by CODESA in order to formulate proposals and make recommendations on the appropriate body/process to draft a new Constitution for South Africa.

"**IT IS RECORDED** that the Working Group on a Constitution-making Body/Process shall have the following terms of reference:

"2.1.1 To investigate, report upon and make recommendations with regard to an appropriate constitution-making body/process.

"In respect of both constitution-making body/process:

"2.1.2 Identification of the key issues and problems that need to be addressed.

"2.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

"2.1.4 In respect of a constitution-making process, specifically, but without vitiating the generality of the objective, to consider:

"(a) To make recommendations to CODESA regarding the process through which a new Constitution may be formulated;

"(b) How far the process can be taken by CODESA itself;

"(c) At what stage a special constitution-making body, if any, should be constituted;

"(d) The role of referenda, if any, in the Constitution-making process;

"(e) Legislative and administrative steps that may be required to reinforce the Constitution-making process;

"(f) The method of transferring constitutional authority to the new Constitution and its structures at national, regional and local level;

"(g) Any other matters which the Working Group may consider relevant to its briefing.

"In respect of a Constitution-making body:

"In the event of it being recommended that there be a special Constitution-making body, then specifically, but without vitiating the generality of paragraph 2.1.1, is to be considered:

"(a) Its composition;

"(b) Its legal status;

"(c) Its authority, including limitations e.g., principles, procedures, etc that may have been agreed previously;

"(d) Its method of functioning;

"(e) The status of its decisions;

"(f) Should it be an elected body, the appropriate electoral process;

"(g) Any other matter which the Working Group may consider relevant to its brief."

Working Group 3 is charged with one assignment, namely: transitional arrangements/interim government/transitional authority. Its terms of reference are as follows:

"**WHEREAS** the parties at CODESA have committed themselves in the terms set out in the Declaration of Intent,

"**AND WHEREAS** it has been agreed that a Working Group of CODESA should be appointed to consider the issue of interim government/transitional arrangements/transitional authority,

"**IT IS RECORDED** that the Working Group on Transitional Arrangements/Interim Government/Transitional Authority shall have the following terms of reference:

"3.1.1 To investigate, canvass all possibilities, their application, report upon and make recommendations with regard to the manner in which the country may be governed and managed until the introduction of a new Constitution.

"3.1.2 Identification of the key issues, processes and problems that need to be addressed.

"3.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

Working Group 4 is also charged with one assignment, namely the future of the TBVC States. Its terms of reference are as follows:

"**WHEREAS** the parties at CODESA have committed themselves in the terms set out in the Declaration of Intent,

"**AND WHEREAS** the parties recognize the need to provide for the meaningful and democratic participation of all the people living in the TBVC States in the process of drawing up and adopting a new Constitution for South Africa as well as in all possible transitional arrangements,

"**AND WHEREAS** the reality of the current existence of a number of separate but parallel institutions such as different administrations, civil services, armed forces,

police forces and judiciaries as well as differing laws in certain instances which presently exist in South Africa, and the TBVC States calls for a re-evaluation of this situation,

"**AND WHEREAS** in the event of re-incorporation the need to ensure that the lives and livelihood of people in the affected territories shall not be subjected to any unnecessary disruption,

"**IT IS RECORDED** that the terms of reference of the Working Group on the Reincorporation of the TBVC States are as follows:

"4.1.1 To investigate, report upon and make recommendations with regard to the relationships between South Africa, the TBVC States and the people of those States under a new South African Constitution.

"4.1.2 Identification of the key issues and problems that need to be addressed.

"4.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

"4.1.4 Specifically, but without vitiating the generality of the above, to consider whether and how:

"(a) To make recommendations to CODESA regarding the manner in which the constitutional status of the TBVC States may be affected by the outcome of negotiations within the framework of CODESA;

"(b) The desirability or otherwise of the reincorporation of such States;

"(c) Testing the will of the people concerned regarding reincorporation or otherwise of the TBVC States, by acceptable democratic means;

"(d) Strategies to keep the people of the TBVC States fully informed, especially to avoid unfortunate misunderstanding;

"(e) The retention of business confidence, particularly in relation to existing investments in the TBVC States;

"(f) Land transfers by South Africa to these States;

"(g) Citizenship;

"(h) Any other matters which the Working Group may consider relevant to its brief.

"4.1.5 If reincorporation is decided upon in respect of any TBVC State, matters that will need to be addressed include:

"(a) Proposals for the reincorporation into South Africa of a TBVC State;

"(b) Consider the question of transitional arrangements in those States which want to be incorporated;

"(c) The time-frames for such a reincorporation and related processes;

"(d) Disposal/transfer of assets of TBVC governments;

"(e) Optimal use of existing infrastructure;

"(f) Review of development-project priorities;

"(g) Good administration during transition;

"(h) The formulation of appropriate measures and steps to be taken to ensure that in the process of reincorporation of a TBVC State, interruption or disruption in administration and the rendering of services and in the daily lives of people in the affected areas are reduced to an absolute minimum;

"(i) Consider the future of civil service in such States;

"(j) The exact form of authority in the TBVC territories;

"(k) Harmonization of legislation and taxation;

"(l) Orderly termination of bilateral and multilateral agreements and treaties;

"(m) Servicing and repayment of TBVC State debts;

"(n) Ensuring public accountability of actions taken for the purposes of reincorporation;

"(o) The identification of specific constitutional, legal and political measures and steps which will have to be taken to effect re-incorporation."

Working Group 5, which is charged with time frames and implementation of CODESA's decisions, has the following terms of reference:

"**WHEREAS THE PARTIES** at CODESA have committed themselves in the terms set out in the Declaration of Intent,

"**AND WHEREAS** it is necessary to record agreements which are reached at CODESA and to implement such agreements and, accordingly, to prepare in draft form the documentation which is required for effect to be given to such arrangements,

"**AND WHEREAS** it has been agreed that a Working Group on the Implementation of Agreements/Decisions shall be appointed by Codesa to identify the steps which need to be taken by the parties to CODESA,

"**AND WHEREAS** it is desirable to advise on the possible time-frames and target dates,

"**IT IS RECORDED** that in terms of reference of the Working Group on Time-Frames and the Implementation of CODESA's Agreements/Decisions are as follows:

"5.1.1 To investigate, report upon and make recommendations with regard to appropriate time-frames and target completion dates for all of the processes and assignments being undertaken by CODESA, its working groups and other bodies created as a result of agreements/decisions of CODESA.

"5.1.2 Identification of the key issues and problems that need to be addressed.

"5.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

"5.1.4 Specifically, but without vitiating the generality of the above, consider whether and how to address:

"(a) The need for a regularly updated comprehensive list of all the decisions, actions and processes involved;

"(b) The coordination of the activities of CODESA and its subsidiary bodies to ensure the greatest possible efficiency of the process towards a democratic South Africa;

"(c) The practicability of setting of target completion dates for all agreement/activities/decisions;

"(d) The monitoring of the process and the adjustment of targets whenever necessary;

"(e) The dissemination of up-to-date information in respect of progress made to all CODESA participants, interested parties and authorities;

"(f) To address the identification of legislation that needs to be enacted or amended;

"(g) To assist in formulating the terms of the legislation or amendments;

"(h) Realistically attainable time-frames;

"(i) Practical effect of implementation of agreements;

"(j) The legality of the process in relation to time-frames to be negotiated within the context of constitutional continuity;

"(k) Any other matters which the Working Group may consider relevant to its brief."

Annex I

JOINT STATEMENT BY INTERNATIONAL OBSERVERS TO THE FIRST MEETING OF CODESA

We, the observers to CODESA from the United Nations, the Organization of African Unity, the Non-Aligned Movement and the Commonwealth, salute the South African people for the launching of their historic Convention. CODESA must herald the dawn of a new era of peace and justice. The broad objectives expressed in the Declaration of Intent are a most constructive and auspicious beginning for CODESA and give promise of attainment of true democracy for South Africa.

We express the hope that all the representatives of the South African people will join in the rebuilding of their country and that reason, good faith and patriotism will steer this challenging process to a successful conclusion.

Our presence at CODESA is a testimony of the profound commitment by the international community to encourage the emergence of a democratic non-racial South Africa with justice, security and well-being for all its citizens.

Annex II

STATEMENT TO THE PRESS BY MRS. SADAKO OGATA, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES AND PERSONAL REPRESENTATIVE OF THE UNITED NATIONS SECRETARY-GENERAL TO CODESA

The Secretary-General was very pleased to accept the invitation of CODESA to observe its first plenary session. He has asked Ambassador Gambari of Nigeria, who is the Chairman of the Special Committee against Apartheid and myself, as his Personal Representative, to head the delegation, which is also composed of Mr. Mousouris, Assistant Secretary-General for the Centre against Apartheid. We are accompanied by six United Nations staff members.

On this historic occasion, the Secretary-General wishes to express his strong hope that the representatives of the South African people will negotiate the future of their country in good faith and build together in a democratic way the foundations for a new constitution that will create a united, non-racial and democratic South Africa. In that context, the Secretary-General also hopes that all parties will find it possible to participate in the deliberations of CODESA, so that its final outcome may be the fullest expression of the will of all the people of South Africa.

The international community is confident that the vision of a new South Africa that the United Nations has promoted over the years, and more recently, which has been endorsed by consensus in the United Nations Declaration on Apartheid and subsequent resolutions, will become a reality in an atmosphere of peace and goodwill. The States Members of the United Nations have requested the Secretary-General to continue monitoring the implementation of the Declaration as well as to pursue appropriate initiatives to facilitate all efforts leading to the peaceful eradication of apartheid. It is in that spirit that we have come to South Africa. The United Nations will observe the deliberations of CODESA closely and is ready to provide assistance in the ongoing process of transforming South Africa as and when requested by South Africans.

May I add a few words more in my capacity as United Nations High Commissioner for Refugees (UNHCR).

Following 501 days of - at times - difficult negotiations, my office - UNHCR - earlier in the year concluded an agreement with the Government of South Africa, paving the way for the voluntary return of South African exiles and refugees.

The operation began on 11 December when 105 persons returned from Tanzania. To date, some 420 South Africans have repatriated in the context of our Programme.

I am pleased to say that, so far, everything has been proceeding smoothly. I am grateful for the cooperation on all sides. I trust that, with this good will and spirit, any obstacle can be removed.

Annex III

STATEMENT TO THE PRESS BY H.E. PROF. IBRAHIM GAMBARI (NIGERIA), CHAIRMAN OF THE UNITED NATIONS SPECIAL COMMITTEE AGAINST APARTHEID

It is with strong emotion that I address you here today, on South African soil. The United Nations Special Committee against Apartheid is particularly gratified to witness the launching of a process for which it has campaigned for so long. We have worked hard to promote the international consensus on South Africa, first evident in the United Nations Declaration on Apartheid in 1989, and strengthened over the past two years in a number of resolutions. Just last week, the General Assembly of the United Nations, speaking with one voice, welcomed the convening of CODESA and called upon - and I quote - "the representatives of the people of South Africa to commence in good faith, urgently, broad-based substantive negotiations towards an agreement on the basic principles of a new Constitution, taking into account the fundamental principles in the Declaration and its suggested guidelines on the modalities for the elaboration of a new Constitution; on transitional arrangements inspiring general confidence in the administration of the country until the new constitution takes effect; and on the role to be played by the international community in ensuring the successful transition to a democratic order." (End of quote).

The United Nations also clearly reaffirmed its responsibility to continue to take all necessary measures aimed at the eradication of apartheid and the establishment of a democratic, non-racial society in South Africa. Therefore in observing closely the process that starts today, in which we fervently hope that all parties will join, the United Nations cannot be a neutral bystander. We are all committed to give our full and concerted support to this critical process.